

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,) 8:04CR512
)
 v.))
)
MICHAEL A. ROMERO,) ORDER
)
 Defendant.)
)

This matter is before the court on several motions filed by the defendant. Defendant first filed a motion, Filing No. 73, asking permission to file a Fed. R. Civ. P. 60(b) motion. The court ruled on this motion, Filing No. 76, and re-characterized, Filing No. 73, as a 28 U.S.C. § 2255 motion, but the court gave defendant time to object to this re-characterization or to amend his § 2255 motion. Defendant then filed a response objecting to this court's re-characterization. Filing No. 78. Accordingly, the court will deem Filing No. 73 as a motion pursuant to Fed. R. Civ. P. 60(b) and will not construe said filing as a § 2255 motion. Likewise, defendant has filed an appeal, Filing No. 81, of this court's ruling in Filing No. 78. The court is not sure if this is really a motion to reconsider, Filing No. 78, or an attempt to appeal to the Eighth Circuit. However, because the court has granted the defendant's request to treat this as a Rule 60(b) motion, Filing No. 81 is denied as moot. The court has now reviewed Filing No. 73 pursuant to Fed. R. Civ. P. 60(b). The court finds the filing is not timely, and in any event, it has no merit. Defendant asks the court to grant him a downward departure pursuant to the safety valve. This is not the type of request that can be made on the merits under Fed. R. Civ. P. 60(b). The court did not make a clerical error in this regard, and consequently the court will deny this motion.

THEREFORE, IT IS ORDERED:

1. Defendant's motion to reconsider, Filing No. 78, is granted;
2. Defendant's motion to appeal, Filing No. 81, is denied as moot;
3. Defendant's motion for relief pursuant to Fed. R. Civ. P. 60(b) is denied.

DATED this 28th day of August, 2007.

BY THE COURT:

s/ Joseph F. Bataillon

JOSEPH F. BATAILLON

United States District Judge